

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA,

-against-

ETHAN CAVE,

Defendant.

ANALISA TORRES, District Judge:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/13/2020

18 Cr. 689-1 (AT)

ORDER

I. Setting Remote Proceeding

Defendant Ethan Cave and his counsel, Jonathan Ma and Anthony Cecutti, shall appear for a substitution of counsel hearing on **October 19, 2020**, at **9:00 a.m.** The Government need not attend. The hearing shall proceed by videoconference. Instructions for the parties' participation in and the public's observance of the proceeding are set out below.

Under the terms of Section 15002(b)(2) of the CARES Act, Pub. L. No. 116-136 (2020), the Judicial Conference of the United States has found that emergency conditions due to the national emergency declared by the President with respect to COVID-19 materially have affected and will materially affect the functioning of the federal courts, and the Chief Judge of this district has entered an order finding that "the use of video teleconferencing, or telephone conferencing if video teleconferencing is not reasonably available, is authorized . . . with the consent of the defendant, or juvenile, after consultation with counsel." *In re Coronavirus/Covid-19 Pandemic*, 20 Misc. 176, ECF No. 3 (S.D.N.Y. Sept. 16, 2020); *see also* ECF No. 70 (letter from defense counsel reflecting consent to proceed telephonically).

Additionally, because of the COVID-19 public health crisis, the Court adopted emergency rules for conducting conferences and proceedings in criminal cases. *See* Rule 2(B) of the Court's Emergency Individual Rules and Practices in Light of COVID-19. Accordingly, defense counsel is directed to confer with the Government, and, prior to the conference, submit a

letter to the docket stating the positions of both defense counsel and the Government on “whether the Court can, consistent with the U.S. Constitution, Federal Rules of Criminal Procedure (*see, e.g.*, Rules 5(f), 10(b) & (c), and 43, and any other relevant law, conduct the matter by . . . telephone or video and, if applicable, whether the Defendant consents to appearance in that manner.” Rule 2(B) of the Court’s Emergency Individual Rules (emphasis added).

II. Instructions

The conference shall proceed via videoconference using the Skype for Business platform on **October 19, 2020, at 9:00 a.m.** As requested, defense counsel will be given an opportunity to speak with the Defendant by telephone for fifteen minutes before the proceeding begins (i.e., at **8:45 a.m.**); defense counsel should make sure to answer the telephone number that defense counsel previously provided to chambers at that time. Other co-counsel, members of the press, and the public may access the audio feed of the conference by calling 917-933-2166 and using access code 605453774.

In advance of the conference, chambers will email the parties with further information on how to access the conference. Those participating by video will be provided a link to be pasted into their browser.

To optimize use of Skype for Business, all participants in the call must:

- a. Use a browser other than Microsoft Explorer to access Skype for Business;
- b. Position the participant’s device as close to the WiFi router as is feasible;
- c. Ensure any others in the participant’s household are not using WiFi during the period of the call;
- d. Unless the participant is using a mobile telephone to access Skype for Business, connect to audio by having the system call the participant;
- e. If there is ambient noise, the participant must mute his or her device when not speaking.

Further, all participants must identify themselves every time they speak, spell any proper names for the court reporter, and take care not to interrupt or speak over one another. Finally, all of those accessing the conference—whether in listen-only mode or otherwise—are reminded that recording or rebroadcasting of the proceeding is prohibited by law.

If Skype for Business does not work well enough and the Court decides to transition to its teleconference line, counsel should call **(888) 398-2342** or **(215) 861-0674** and use access code **5598827**.

SO ORDERED.

Dated: October 13, 2020
New York, New York



ANALISA TORRES
United States District Judge